No. 87-1867

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In the Supreme Court of the United States

OCTOBER TERM, 1988

SANDRA TURNER, ET AL., PETITIONERS

v.

LINDA MCMAHON, OTIS R. BOWEN, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether Section 402(a)(22) of the Social Security Act, 42 U.S.C. (Supp. III) 602(a)(22), which requires a state agency administering the Aid to Families with Dependent Children program (AFDC) to recover "any overpayment" made to AFDC recipients, applies to overpayments made under a later overturned court order.

2. Whether Section 402(a)(22) of the Social Security Act, 42 U.S.C. (Supp. III) 602(a)(22), unlawfully curtails the equitable jurisdiction of federal courts.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-29) is reported at 830 F.2d 1003. The decision of the district court (Pet. App. 30-53) is unreported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 56-57) was entered on October 16, 1987. A petition for rehearing and suggestion for rehearing en banc were denied on February 22, 1988 (Pet. App. 58-61). The petition for a writ of certiorari was filed on May 6, 1988. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In November 1981, petitioners, a class of persons receiving assistance under the Aid to Families with Dependent Children (AFDC) program, filed suit in the United

States District Court for the Northern District of California. The complaint alleged, among other claims, that the State of California, in implementing directions issued by the Secretary of the Department of Health and Human Services (HHS) (Secretary), had improperly calculated the amount of benefits due those AFDC recipients who work.[1] The district court, concluding that the $75 work expense disregard should be deducted from net income, and thus should not be reduced by work expenses reflected in mandatory payroll deductions, enjoined the State of California from implementing its new regulations and enjoined the Secretary from terminating federal matching funds due the State; the court of appeals affirmed (*Turner* v. *Woods*, 559 F. Supp. 603 (1982), aff'd, 707 F.2d 1109 (1983)). Pet. App. 10.

On August 10, 1984, after certiorari was granted,[2] Justice Rehnquist, acting as Circuit Justice for the Ninth Circuit, granted the Secretary's application for a stay of the district court injunction "prospectively from July 18, 1984." *Heckler* v. *Turner*, 468 U.S. 1305, 1309 (1984).[3] Thereafter, this Court unanimously reversed the court of appeals' judgment, holding that "mandatory tax with-

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[1] The primary issue was whether the $75 standard work expense disregard in Section 402(a)(8) of the Social Security Act, 42 U.S.C. (Supp. III) 602(a)(8), should be deducted from net income or gross income in determining AFDC benefits. In other words, whether the disregard encompassed all work expenses, including those reflected in mandatory payroll deductions, or only those expenses the claimant paid out of his disposable income. Pet. App. 10.

[2] See 465 U.S. 1064 (1984).

[3] Justice Rehnquist based his decision on the recently-enacted Deficit Reduction Act of 1984, Pub. L. No. 98-369, 98 Stat. 494, which made clear that the term "earned income" in Section 402(a)(8) of the Social Security Act meant gross earned income. See 468 U.S. at 1306-1307.

holdings were among the items encompassed by the flat-sum disregard of [Section 402(a)(8)]." *Heckler* v. *Turner*, 470 U.S. 184, 211 (1985).

2. As a result of this Court's decision in *Heckler* v. *Turner*, the Secretary, on April 30, 1985, ordered states to recover overpayments made to AFDC recipients between the date of the district court's permanent injunction, July 29, 1982, and Justice Rehnquist's stay, August 10, 1984 (Pet. App. 11).[4] When the State of California sought to

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[4] See HHS Action Transmittal No. SSA-AT-85-10 (Apr. 30, 1985). The Social Security Act and the Secretary's regulations authorized this directive. Section 402(a)(22) of the Social Security Act, 42 U.S.C. (Supp. III) 602(a)(22), requires that state AFDC plans must

> provide that the State agency will promptly take all necessary steps to correct any overpayment or underpayment of aid under the State plan, and, in the case of–
>
> (A) an overpayment to an individual who is a current recipient of such aid * * *, recovery will be made by repayment by the individual or by reducing the amount of any future aid payable to the family of which he is a member * * *.
>
> (B) an overpayment to any individual who is no longer receiving aid under the plan, recovery shall be made by appropriate action under State law against the income or resources of the individual or the family * * *.

The applicable regulations reiterate that a state "shall recover" an overpayment from, among others, "any individual members of the overpaid assistance unit whether or not currently a recipient" (45 C.F.R. 233.20(a)(13)(B)). The Secretary has defined an overpayment as "a financial assistance payment received by or for an assistance unit for the payment month which exceeds the amount for which that unit was eligible" (45 C.F.R. 233.20(a)(13)). Recovery is to be by set-off, but "[i]f the State recovers from individuals who are no longer recipients, or from recipients who refuse to repay the overpayment from their income and resources," recovery is to be by "appropriate action under State law * * *" (45 C.F.R. 233.20(a)(13)(B)).

comply with the Secretary's order, petitioners filed a motion in the district court to prohibit the State from recouping any AFDC overpayments. In their supplemental complaint, petitioners argued that overpayments made to AFDC recipients under a court order were not "overpayments" within the meaning of Section 402(a)(22) and the applicable regulations. The State countered that such overpayments were recoverable under the statute. The State also filed a third-party complaint against the Secretary, asserting that if the State were prohibited from recovering overpayments, the Secretary should be prohibited from imposing sanctions for the State's failure to comply with federal law. Pet. App. 11-14.

The district court, presented with cross-motions for summary judgment, entered judgment in favor of petitioners. After reviewing the legislative history of Section 402(a)(22), the court concluded that "payments made pursuant to an injunction which is subsequently reversed are not 'overpayments' under 42 U.S.C. 602(a)(22) * * *" (Pet. App. 43). The court accordingly enjoined the State from "recouping [AFDC] benefits paid pursuant to [the] permanent injunction of July 29, 1982" (*id.* at 52), and also enjoined the Secretary "from taking any action to declare that California is out of conformity with federal law" (*id.* at 52-53).

3. The court of appeals reversed (Pet. App. 1-29), holding that "[t]he plain language" of Section 402(a)(22) required the recoupment of "any overpayment" to AFDC recipients and did not "distinguish between classes of overpayments that may be recouped" (Pet. App. 20). The court found that the Secretary's regulation, 45 C.F.R. 233.20(a)(13), which "impose[d] no restriction on the right of a state to recoup any overpayment" (Pet. App. 21), fully supported this reading of Section 402(a)(22).

The court of appeals rejected petitioners' argument that such a strict reading of the statute would unconstitutionally "curtail a district court's equitable jurisdiction" (Pet. App. 26). Rather than limiting a district court's equitable jurisdiction, Congress "expressly expanded the remedies available to recover an overpayment of AFDC funds" (*id.* at 27). In the court's view, Section 402(a)(22) permitted a state to seek recovery of an overpayment under its "common law right of restitution" (Pet. App. 27, citing *Arkadelphia Milling Co.* v. *St. Louis S.W. Ry.*, 249 U.S. 134 (1919)), or under the statute itself by filing an action under state law. Finally, the court observed that Congress has the power under Article III "to fashion new remedies" (Pet. App. 27, citing the Declaratory Judgment Act, 28 U.S.C. 2201 *et seq.*), and "to limit the applicability of the traditional equitable remedies available in the district court" (Pet. App. 27-28, citing *Aetna Life Ins. Co.* v. *Haworth*, 300 U.S. 227 (1937)).[5]

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[5] The court also rejected petitioners' argument that Section 402(a)(22) was unconstitutional because " '[a]t no time would the state welfare agency have to pose the issue of restitution to a court' " (Pet. App. 24). Under California law, the State must notify each AFDC recipient of the proposed reduction in benefits and must provide a hearing if the recipient so requests. See Cal. Welf. & Inst. Code § 11004(e) (West Supp. 1988). If the recipient remains dissatisfied after the hearing, he may seek judicial review of the decision under California law. See Cal. Welf. & Inst. Code § 10962 (West 1980). In other words, "California has a statutory scheme which permits * * * AFDC recipients to obtain an administrative hearing and judicial review of a determination made concerning overpayments" (Pet. App. 26).

In light of its disposition, the court of appeals also vacated the award of attorneys' fees to petitioners under 42 U.S.C. 1988 (Pet. App. 28).

ARGUMENT

The decision below is correct. It does not conflict with any decision of this Court or of any other court of appeals. Accordingly, review by this Court is not warranted.

1. Petitioners renew the contention (Pet. 30-42) that, despite the language of Section 402(a)(22), the statute does not include overpayments made under an injunction reversed on appeal. This Court has long recognized, however, that "[t]here is * * * no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes." *United States* v. *American Trucking Ass'ns*, 310 U.S. 534, 543 (1940). Section 402(a)(22) unambiguously provides that an AFDC plan must "provide that the State agency will promptly take all necessary steps to correct any overpayment or underpayment of aid under the * * * plan * * *." The statute makes no distinctions between types of overpayments. And, unlike other statutes authorizing agencies to recover overpayments,[6] Section 402(a)(22) does not authorize the Secretary to refrain from seeking

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[6] For example, 42 U.S.C. 404, pertaining to Federal Old Age, Survivors, and Disability benefits, authorizes the Secretary to recover overpayments (42 U.S.C. 404(a)), but provides (42 U.S.C. 404(b)) that

> there shall be no adjustment of payments to, or recovery by the United States from, any person who is without fault if such adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience.

Similar language appears in other federal benefits statutes (see, *e.g.*, 38 U.S.C. 3102(a) (overpayment of veterans' benefits); 42 U.S.C. (Supp. III) 1383(b)(1) (Supplemental Security Income for the Aged, Blind, and Disabled (SSI) benefits)); Section 402(a)(22) contains no such qualifications.

overpayments where recovery would be inequitable. By its terms, the Secretary must recover any and all overpayments.[7]

Contrary to petitioners' argument (Pet. 35-42), the legislative history confirms the straightforward meaning of Section 402(a)(22). Congress enacted the recoupment provision as part of Section 2318 of the Omnibus Budget Reconciliation Act of 1981 (OBRA), Pub. L. No. 97-35, 95 Stat. 856. This provision was a critical part of "the cost-cutting focus of the OBRA amendments." *Heckler* v. *Turner*, 470 U.S. 184, 205 (1985). Indeed, the Senate Report on OBRA stated that the recoupment provision would save the government, in the years 1982 through 1984, an estimated $330 million. See S. Rep. 97-139, 97th Cong., 1st Sess. 519 (1981). By requiring recoupment of "any overpayment," Congress clearly intended to save the federal government substantial sums of money. Although a common or literal reading of a statute may be rejected "where acceptance of that meaning would lead to absurd results * * * or would thwart the obvious purpose of the statute" (*Helvering* v. *Hammel*, 311 U.S. 504, 510-511

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[7] Petitioners also contend (Pet. 33-34) that Section 402(a)(22) cannot be read literally because the Secretary treats this provision differently from Section 403(i) of the Social Security Act, 42 U.S.C. 603(i). The latter section authorizes the Secretary to withhold from states, in certain well-defined circumstances, funds equivalent to "erroneous excess payments." Congress defined this term to include "overpayments to eligible families" (42 U.S.C. 603(i)(1)(C)(ii)). Section 403(i), however, differs from Section 402(a)(22) in several respects, including its having a provision authorizing the Secretary to waive the recovery of overpayments (42 U.S.C. 603(i)(1)(B)), and a provision setting tolerance levels for erroneous overpayments (42 U.S.C. 603(i)(1)(A)). Moreover, the record in this case suggests, contrary to petitioners' assertion, that the Secretary would read the term "excess erroneous payments" as including those made under a later reversed court order.

(1941)), Congress's cost-cutting objective in enacting the statute plainly supports the plain meaning of the provision that any overpayment should be recovered.

2. Petitioners also argue (Pet. 13-16, 19-24) that the court of appeals' literal reading of Section 402(a)(22) unconstitutionally deprives district courts of equitable jurisdiction. Petitioners' claim is wrong. Congress can, consistently with Article III, create statutory remedies unknown at common law; this is precisely the essence of the recoupment provision. And, contrary to petitioners' suggestion, Congress can limit a district court's power to apply traditional equitable remedies. For example, Congress, through Section 1 of the Norris-La Guardia Act, 29 U.S.C. 101, deprived federal courts of jurisdiction to enter injunctive relief in certain labor disputes. *Lauf* v. *E.G. Shinner & Co.*, 303 U.S. 323, 330 (1938) (footnote omitted) ("There can be no question of the power of Congress [in enacting the Norris-La Guardia Act] to define and limit the jurisdiction of the inferior courts of the United States."); see also the Tax Injunction Act, 28 U.S.C. 1341; the Johnson Act, 28 U.S.C. 1342; the Anti-Injunction Act, 28 U.S.C. 2283.[8] Under the circumstances, Congress's requiring repayment of AFDC benefits did not impermissibly infringe upon the equitable jurisdiction of the federal courts.[9]

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[8] Cf. *Aetna Life Ins. Co.* v. *Haworth*, 300 U.S. 227, 240 (1937) ("In providing remedies * * * in relation to cases and controversies in the constitutional sense the Congress is acting within its delegated power over the jurisdiction of the federal courts which the Congress is authorized to establish.").

[9] Petitioners also apparently contend (Pet. 16-19, 24-30) that, under the court of appeals' application of Section 402(a)(22), the State's recoupment of overpayments would escape meaningful judicial review. As the court of appeals correctly concluded (Pet. App. 26), however,

> California has a statutory scheme which permits current AFDC recipients to obtain an administrative hearing and judicial review

CONCLUSION

The petition for a writ of certiorari should be denied.
Respectfully submitted.

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of a determination made concerning overpayments. Similarly, a former AFDC recipient is provided judicial review when the county initiates an action to collect the overpayments.

Moreover, the Secretary's regulations provide that every AFDC applicant or recipient "shall be informed in writing at the time of application and at the time of any action affecting his claim * * * [o]f his right to a hearing * * *" (45 C.F.R. 205.10(a)(3)). These state and federal provisions belie petitioners' assertion that adequate judicial review would be unavailable.

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